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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,559	01/23/2002	Peter Gross		6947

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EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/052,559	<b>Applicant(s)</b> GROSS ET AL.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16-23,25-44 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-23,25-35,37-44 and 46-48 is/are rejected.
- 7) ☐ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's response filed 11/22/05 has been entered and carefully considered. New claim 48 has been added. Arguments of claims 16-23, 25-44 and 46-48 have not been found to be patentable over prior art of record and newly discovered prior art, therefore, claims 1-23, 25-44, 46-48 are rejected under the same and new ground rejections as set forth below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-17, 20, 22, 26-27 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert (1364188 IDS cited reference) in view of Wanzl (DE 4207581).

With regard to claims 16-17, 20, 22, 26-27 and 47, Draenert discloses a toothbrush (fig. 3) comprising a bristle carrying front head part (2) and a handle (22), the handle being transparent and providing a closed inner cavity extending over at least part of the length and being initially open at a rear end of the handle; the toothbrush further having an elongated article (20) has printing on it (fig. 3) providing an aesthetic

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effect in the cavity and extending in a longitudinal direction of the toothbrush and being visible through the handle; the tooth brush further having a closure part (7) releasably connected to the rear end of the handle. Draenert does not disclose the handle being cylindrical shape and the article being a cylindrical, hollow roll has printing thereon, bearing with its essentially cylindrical outer surface against an inner wall of the cavity, wherein the roll being formed by a rolled section of material. However, Wanzl discloses a shopping trolley (figs. 1-2) comprising a transparent cylindrical handle (5) defining a hollow, cylindrical cavity (space where hollow roll 8 locates) which contains a cylindrical, hollow roll (8, fig. 2) with printing (11) thereon bearing with its essentially cylindrical outer surface against an inner wall of the cavity, wherein the roll being formed by a rolled section of material. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct disclose the handle being cylindrical shape, since such a modification would have involved a mere change in the shape of the component and it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the hollow roll as taught by Wanzl into the toothbrush of Draenert for the purpose of providing indicia readable on all sides of the handle.

Claims 19, 21, 25 and 46, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Wanzl.

With regard to claims 19, 21, 25 and 46, 48, Draenert in view of Wanzl disclose a toothbrush comprising all the claimed limitations in claim 16 as discussed above except

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for the roll being transparent, the closure part being thermoplastic and non-releasable to the handle and the cross-section of the handle varies along the longitudinal direction. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the roll being transparent, the closure part being thermoplastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Also, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to form a non-releasable closure part to the handle, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. And it would have been an obvious matter of the design choice to construct the cross-section of the handle varies along the longitudinal direction since such modification would involve in a shape of the known element to obtain desired results.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Wanzl as applied to claim 20 above, and further in view of Meranto (3325847).

With regard to claim 23, Draenert in view of Wanzl disclose a toothbrush comprising all the claimed limitations in claim 16 as discussed above except for the closure part being provided with a positioning part for positioning the toothbrush on an underlying surface. Merranto discloses a toothbrush (fig. 1) having a closure part (14) with a positioning part (21). It would have been obvious to one having an ordinary skill in

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the art at the time the invention was made to employ the closure part with the positioning part as taught by Merranto into the toothbrush of Draenert in view of Wanzl for the purpose of positioning the toothbrush on an underlying surface (fig. 1).

Claims 28-29, 32, 35, 37, 39 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Dorney (U.S. Pat. # 6,062,380).

With regard to claims 28-29, 32, 35, 37, 39 and 43-44, Draenert discloses a toothbrush as discussed above except for the article being an ampoule being filled with luminescent. Dorney discloses a cup (fig. 4) having an ampoule (60) being filled luminescent (64). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the ampoule as taught by Dorney into the toothbrush of Draenert for the purpose of providing an aesthetic look.

Claims 30-31, 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Dorney.

With regard to claims 30-31 and 33-34, Draenert in view of Dorney discloses a toothbrush comprising all the claimed limitations in claim 28 as discussed above except for the ampoule being filled with liquid having floating articles, fine-grained material, hologram foils, gas. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular ampoule as a matter of choice.

Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Dorney as applied to claim 37 above, and further in view of Meranto (3325847).

With regard to claims 40-41, Draenert in view of Dorney disclose a toothbrush comprising all the claimed limitations in claim 37 as discussed above except for the closure part being provided with a positioning part having a planar standing surface at right angle to the longitudinal axis of the toothbrush and closure part. Merranto discloses a toothbrush (fig. 1) having a closure part (14) with a positioning part (21) having a planar standing surface at right angle to the longitudinal axis of the toothbrush and closure part. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the closure part with the positioning part as taught by Merranto into the toothbrush of Draenert in view of Dorney for the purpose of positioning the toothbrush on an underlying surface (fig. 1).

Claims 38 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draenert in view of Dorney.

With regard to claims 38 and 42, Draenert in view of Dorney disclose a toothbrush comprising all the claimed limitations in claim 28 as discussed above except for the closure part being thermoplastic and non-releasable to the handle. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the closure part being thermoplastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. And it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to form a non-releasable closure part to the handle, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Claim 36 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has argued that the cylindrical hollow roll of Wanzl is not bearing against an inner wall of the cavity member. This is not correct, as discussed above and also in figure 2, roll 8 is bearing against the inner wall of member (9) which is part of handle (5). In response to applicant's argument that Wanzl is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Wanzl used the cylindrical roll bearing against the handle of a shopping cart to provide information or advertisements which solve the same problem as the invention.



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

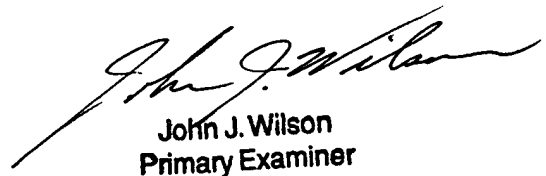
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner